

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

9:00 AM

1:17-11884 Toni Lynn Crey

Chapter 13

#0.01 Order 1- Setting Status Conference: 2- Directing Compliance with Applicable Law; and 3- Requiring Debtor(s) to explain why this case should not be converted or dismissed with 180-day bar to refile

Docket 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Toni Lynn Crey

Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

9:00 AM

1:17-11947 Joseph Edmund Perez

Chapter 13

#0.02 Order 1- Setting Status Conference: 2- Directing Compliance with Applicable Law; and 3- Requiring Debtor(s) to explain why this case should not be converted or dismissed with 180-day bar to refile

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Edmund Perez

Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

9:00 AM

1:17-11895 Zoila Villafana

Chapter 13

#0.03 Order 1- Setting Status Conference: 2- Directing Compliance with Applicable Law; and 3- Requiring Debtor(s) to explain why this case should not be converted or dismissed with 180-day bar to refile

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Zoila Villafana

Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

9:00 AM

1:17-11895 Zoila Villafana

Chapter 13

#0.04 Motion in Individual Case for Order
Imposing a Stay or Continuing the Automatic
Stay as the Court Deems Appropriate

Docket 5

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Zoila Villafana	Pro Se
-----------------	--------

Movant(s):

Zoila Villafana	Pro Se
-----------------	--------

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se
-----------------------------	--------

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

9:00 AM

1:17-11917 Eduardo Garcia Calvera

Chapter 13

#0.05 Order 1- Setting Status Conference: 2- Directing
Compliance with Applicable Law; and 3- Requiring
Debtor(s) to explain why this case should not be
converted or dismissed with 180-day bar to refile

Docket 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eduardo Garcia Calvera

Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

9:00 AM

1:17-11917 Eduardo Garcia Calvera

Chapter 13

#0.06 Motion in Individual Case for Order
Imposing a Stay or Continuing the Automatic
Stay as the Court Deems Appropriate

Docket 5

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eduardo Garcia Calvera	Pro Se
------------------------	--------

Movant(s):

Eduardo Garcia Calvera	Pro Se
------------------------	--------

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se
-----------------------------	--------

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

9:30 AM

1:09-11678 Pacifica of the Valley Corporation

Chapter 11

#1.00 Post Confirmation Status Conference

fr. 6/16/11, 7/7/11, 7/21/11, 12/8/11, 1/12/12,
1/19/12, 9/20/12, 10/18/12, 11/9/12, 11/2/12,
12/20/12, 2/28/13, 6/6/13, 9/26/13, 12/5/13,
2/13/14, 3/27/14, 6/12/14, 7/3/14, 10/23/14,
1/22/15, 2/19/15, 4/23/15; 5/28/15, 8/13/15;
9/3/15, 11/12/15, 1/21/16; 3/3/16, 6/2/16,
9/15/16, 12/8/16; 3/2/17, 3/8/17, 6/14/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pacifica of the Valley Corporation

Represented By
David Gould
Geoffrey S Goodman

Movant(s):

Pacifica of the Valley Corporation

Represented By
David Gould
Geoffrey S Goodman

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

9:30 AM

1:10-23071 Rancho Topanga Development Land Company

Chapter 11

#2.00 Coldwell Banker's First and Final Application for Entry of Order Allowing and Directing Payment of Administrative Expense Claim Under 11 U.S.C. Section 503(b)(2) or, Alternatively, 11 U.S.C. Section 503(b)(1)

fr. 7/26/17

Docket 399

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Prior to the commencement of the bankruptcy case, Debtor had entered into a vacant land purchase agreement in 2006 with a third-party, Liebes Properties, Inc. ("Liebes") to purchase the Real Property for \$2.975 million. See Docket No. 15. Liebes had deposited \$89,250 into escrow prepetition on February 13, 2006, but the sale never closed due to issues regarding the permitting of road adjacent to the Real Property. See id.

Following the Petition Date, Liebes filed a motion for relief from stay seeking to terminate its obligations under the purchase agreement. See Docket No. 31. Debtor filed a competing motion seeking an order compelling the assumption of the purchase agreement. See Docket No. 53. This dispute continued for nearly three years resulting in the entry of an order approving a sale and compromise between the parties followed by an order vacating the sale order, an ensuing appeal and a further compromise order settling the issues between the parties.

On January 23, 2015, Debtor filed its Motion for Order Employing Professional seeking to employ Coldwell Banker ("Coldwell") to sell the Real Property (doc. no. 273, the "Coldwell Application"). Debtor indicated that it selected Coldwell Banker because Coldwell Banker was well qualified to represent Debtor and because Debtor's Real Property "is a unique, undeveloped parcel in Malibu, California" and Coldwell Banker "has specific experience in the area and with parcels of this type."

Attached to the Coldwell Application was the Residential Listing Agreement entered into between Debtor and Coldwell Banker as of January 21, 2015, which set

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

9:30 AM

CONT... Rancho Topanga Development Land Company Chapter 11

the listing price for the Real Property at \$6.995 million and provided Coldwell "as compensation for services . . . 7.000 percent of the listing price." See RJN ISO App. for Admin. Expense, Exh. 3 at p. 10. On February 17, 2015, this Court entered its Order Authorizing Employment of Coldwell Banker (doc. no. 293, the "Coldwell Employment Order") granting the Coldwell Application without varying the compensation provision set forth in the Coldwell Application.

On April 3, 2017, Debtor filed its Sale Motion seeking authorization to sell the Real Property. In the Sale Motion, Debtor sought approval of its Vacant Land Purchase Agreement and Joint Escrow Instructions dated June 18, 2015 (the "Purchase Agreement") entered into between Debtor and Timothy Ralston or his designee (the "Purchaser"). The Sale Motion provided for an all-cash sale for \$7 million for the Real Property. See Sale Motion, p. 12. Debtor estimated that the sale would generate approximately \$2.5 million in funds for Debtor's equity holder after payment of secured claims, administrative expenses and closing obligations. Id. at p. 15. The Sale Order contained a provision that Debtor was authorized to pay brokerage commissions "not to exceed \$350,000." RJN ISO App. for Admin. Expense, Exh. 13, p. 3. Neither the Sale Motion or Sale Order were served on Coldwell, as required under the Federal Rules of Civil Procedure or the Local Rules.

Rule 60

Fed. R. Civ. P. 60 provides:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(6) any other reason that justifies relief.

FED. R. CIV. P. 60(b).

Civil Rule 60(b) is to be liberally construed in order to fashion justice as the circumstances require. Laguna Royalty Co. v. Marsh, 350 F.2d 817, 823 (5th Cir. 1965). If relief is sought for legal error, it is categorized as "mistake" under Civil Rule 60(b)(1). See Hopper v. Euclid Manor Nursing Home, Inc., 867 F.2d 291, 294 (6th

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room

302

9:30 AM

CONT... Rancho Topanga Development Land Company

Chapter 11

Cir. 1989). If a decision is made on a patent misunderstanding, including a factual error, reconsideration is appropriate. See RKI, Inc. v. Grimes, 200 F. Supp. 2d 916 (D.C. Ill. 2002). Civil Rule 60(b)(6) is a catch all provision and, generally, exceptional circumstances will support relief under that provision. See Gonzalez v. Gannett Satellite Information Network, Inc., 903 F.Supp. 329 (D.C.N.Y. 1995). Further, relief under Civil Rule 60(b)(6) should be permitted when the circumstances warrant the exercise of equitable power to accomplish justice. Klapprott v. U.S., 335 U.S. 601, 615, 69 S. Ct. 384 (1949).

Discussion

Coldwell argues that the Sale Motion on its face did not provide any indication that Debtor had unilaterally decided to reduce Coldwell's commission from 7.00% to 5.00%, which amounted to a \$140,000 reduction. The Sale Motion also failed to provide any substantive basis for reduction of the commission. Moreover, the Sale Motion was not served on Coldwell Banker through either ECF or via U.S. Mail. See Docket No. 377, p. 40-43 of 43. Coldwell characterizes Debtor's attempt to reduce the commission from 7% to 5% as being "[b]uried within 509 pages of exhibits to the Sale Motion was Exhibit 8—a one-page report setting forth the estimated expenses relating to the sale, which indicated that the Coldwell Banker commission would be paid at 5.0%." See Docket No. 380-6, Exh. 8, p. 2 of 9.10. Coldwell also complains that none of these exhibits were served on it through either ECF or via U.S. Mail. See Docket No. 380-17, p. 37-38 of 38.11 In fact, the proof of services indicates that the 500+ pages of exhibits to the Sale Motion were served via ECF and by mail to this Court only. See *id.*

Debtor explains that it did not "unilaterally reduce" the commission; rather, it reserved the right to lessen the percentage commission by couching the terms of the commission in the Employment Application as "the actual commission would be addressed and approved by the Court 'in conjunction with its approval of a sale.'" Opposition to App. for Admin. Expense, 10:21-22. Presumably, Debtor rests this argument on paragraph 4(b), "Actual payment of compensation to Broker is subject to approval by the Bankruptcy Court in conjunction with its approval of a sale." The Notice of Motion for Authority to Sell Real Property does not give any notice that Debtor would seek, within the Motion, authority to reduce the percentage that the Court approved in the Coldwell Employment Order. As to Coldwell's complaints of insufficient notice, Debtor argues that it send a copy of the Sale Motion and the Notice of Sale to "certain parties in interest," among whom were "Kimberly Collen" and "Andy Stern," individuals that Debtor's counsel characterizes as "managers who oversee the [Coldwell] offices." Coldwell notes that these emails do not comport with service requirements under the Federal Rules or the Local Rules, and that the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

9:30 AM

CONT... Rancho Topanga Development Land Company

Chapter 11

emails were sent to individuals who were not even the principal agents on the transaction. Further, there is no indication that the Coldwell agents agreed to accept notice by email or via ECF.

Here, Coldwell Banker satisfies Civil Rule 60(b)(1) and (b)(6). Any other result would be simply a sleight of hand denial of proper process. The Notice of Sale of Estate Property (doc. 379), indicated to the properly noticed parties, of whom Coldwell was not, that Debtor intended to pay a broker's commission of 5%, but it was buried in many other matters and did not highlight a change in a previous order. Debtor did not move to amend the Coldwell Employment Order to reflect what it later believed was appropriate compensation, nor did Debtor give proper notice to Coldwell that, by its Sale Motion, it would seek to reduce Coldwell's Court-approved compensation structure. Assuming that Coldwell received the emails, nothing on the face or title of the Motion would have put Coldwell on notice that Debtor was changing the terms in the Coldwell Employment Order. These facts sufficiently explain Coldwell's mistake in not opposing that term in the Sale Motion, and Coldwell's surprise at having its compensation under the Coldwell Employment Order reduced.

The Motion for Reconsideration is GRANTED. The Sale Order shall be amended to reflect that Coldwell shall be paid brokerage commission of 7% of the Sale Price, without the \$350,000 cap that appears in ¶ 14(c) of the original Sale Order; and

The Motion for Administrative Claim is not necessary, given the above, so it is DENIED as moot.

Coldwell to lodge an Order Granting Motion for Reconsideration and Amending Sale Order (doc. 384) and an Order Denying Application for Administrative Expense Claim.

Party Information

Debtor(s):

Rancho Topanga Development Land

Represented By
David R. Weinstein

Movant(s):

Coldwell Banker

Represented By
Bernard D Bollinger Jr

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

9:30 AM

1:16-11598 Farideh Warda

Chapter 11

#3.00 Motion RE: Objection to Claim
7 by Claimant Los Angeles County
Treasurer and Tax Collector

fr. 7/12/17

Docket 81

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

It would seem that there had to be notice to a taxpayer that a property was put back in their name. The process described here leaves much to be desired. Let's discuss what fees and specifics should be sorted out.

Party Information

Debtor(s):

Farideh Warda

Represented By
M Jonathan Hayes
Roksana D. Moradi

Movant(s):

Farideh Warda

Represented By
M Jonathan Hayes
Roksana D. Moradi

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

9:30 AM

1:16-11598 Farideh Warda

Chapter 11

#4.00 Motion RE: Objection to Claim
4 by Claimant U.S. Bank National Association,
as Trustee for Harborview Mortgage Loan Trust 2005-16,
Mortgage Loan Pass-Through Certificates, Series 2005-16,
as serviced by Nationstar Mortgage LLC

fr. 7/12/17

Docket 82

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This may require an evidentiary hearing, so we can discuss if the parties do not work some other resolution out.

Party Information

Debtor(s):

Farideh Warda

Represented By
M Jonathan Hayes
Roksana D. Moradi

Movant(s):

Farideh Warda

Represented By
M Jonathan Hayes
Roksana D. Moradi

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

9:30 AM

1:17-11686 Vladimir Vekic

Chapter 11

#5.00 Status and Case Management Conference

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Vladimir Vekic

Represented By
Stephen L Burton

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

9:30 AM

1:17-11698 Retzel Gacayan Fabregas

Chapter 11

#6.00 Status and Case Management Conference

Docket 1

***** VACATED *** REASON: dismissed w/ 180-day bar on 7/14/17. ECF
No. 19. - CW**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Retzel Gacayan Fabregas

Represented By
Joshua L Sternberg

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

9:30 AM

1:17-11823 John M Genga and Hilary B Genga

Chapter 11

#7.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate re 4943 Haskell Ave., Encino, CA 91436 and all other assets of the estate

Docket 10

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

APPEARANCE REQUIRED

Party Information

Debtor(s):

John M Genga

Represented By
Matthew D Resnik
Roksana D. Moradi

Joint Debtor(s):

Hilary B Genga

Represented By
Matthew D Resnik
Roksana D. Moradi

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

1:14-15087 Mary R Carlos

Chapter 13

#8.00 Motion for relief from stay

WESTERN ALLIANCE BANK

Docket 37

***** VACATED *** REASON: APO**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Party Information

Debtor(s):

Mary R Carlos

Represented By
Eric Bensamochan

Movant(s):

Western Alliance Bank

Represented By
Erin M McCartney

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

1:16-11830 Karen Campbell

Chapter 13

#9.00 Motion for relief from stay

PNC BANK, NATIONAL ASSOCIATION

Docket 25

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Petition Date: 6/21/2016
Chapter: 13 (plan confirmed 10/7/2016)
Service: Proper. Opposition filed 7/28/17.
Property: 4991 Barbados Ct., Oak Park, CA 91377
Property Value: \$800,000 (per debtor's schedules)
Amount Owed: \$589,140.03
Equity Cushion: 18.4%
Equity: \$146,859.97
Post-Confirmation Delinquency: \$23,576.53 (5 payments of between \$3,191.48 and \$3,503.25; less suspense account of \$325.77)

Movant requests relief under 11 U.S.C. 362(d)(1), with the specific relief requested in paragraphs **2** (proceed under non-bankruptcy law); **3** (Movant permitted to engage in loss mitigation activities); **7** (waiver of the 4001(a)(3) stay); and **14** (other relief requested –*any foreclosure action to be conducted by PNC Bank, N.A.*)

DENY relief requested in paragraph **6** (co-debtor stay is waived under 11 U.S.C. §1201(a) or §1301(a) – *co-debtor not listed or served*).

Debtor opposes the Motion, arguing an APO with Movant is in the works. Debtor contends she fell behind with her mortgage payments, because Debtor's non-filing spouse experienced a change in work status. Now, Debtor's spouse is gainfully employed, and has a steady job. Debtor claims post-petition arrearages will be paid within one year, and future mortgage payments will be paid on time.

APPEARANCE REQUIRED.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

CONT... Karen Campbell

Chapter 13

Party Information

Debtor(s):

Karen Campbell

Represented By
Todd Mannis

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

1:17-11777 Cindy Lee Harris

Chapter 13

#10.00 Motion in Individual Case for Order Imposing
a Stay or Continuing the Automatic Stay
as the Court Deems Appropriate

Docket 8

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

On 7/5/17, Debtor filed this chapter 13 case. Debtor has three previous bankruptcy cases that were dismissed within the previous six years. The First Filing, 08-18402-VK, was a chapter 13 that was filed on 10/27/08 and dismissed on 2/10/11 for failure to make plan payments. The Second Filing, 12-13156-VK, was a chapter 13 that was filed on 4/4/12 and dismissed on 4/11/13 for failure to make plan payments. The Third Filing, 16-10241-MB, was a chapter 13 that was filed on 1/26/16 and dismissed on 6/6/17 for failure to make plan payments.

Debtor now moves for an order continuing the automatic stay as to all creditors. Debtor argues that the present case was filed in good faith notwithstanding the dismissal of the previous case for failure to make payments, because her fundraising business experienced an unexpected and serious lull causing her to fall behind on her payments. Debtor claims that the presumption of bad faith is overcome as to all creditors per 11 U.S.C. 362(c)(3) because there has been a substantial change in her personal affairs. Debtor's income has increased and stabilized, as she is employed by a non-profit organization. Debtor also has a family member who is willing to contribute if necessary. Debtor is confident she is able to successfully complete this chapter 13.

No opposition filed. The following were improperly served:

- AT&T's agent for service of process: C T Corporations System, 818 W 7th Street Suite 930, Los Angeles, CA 90017 (CA Secretary of State Business Search)
- American Express' agent for service of process: C T Corporations System, 818 W 7th Street Suite 930, Los Angeles, CA 90017 (CA Secretary of State Business Search)

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

CONT...

Cindy Lee Harris

Chapter 13

- MMOTA Inc.'s agent for service of process: Toros Yetenekian
1224 E. Broadway, Suite 105 Glendale CA 91205 (CA Secretary of State
Business Search)
- Charter Communications (aka Time Warner)'s agent for service of process:
CSC - Lawyers Incorporating Service, 2710 Gateway Oaks Dr.
Ste.150N, Sacramento, CA 95833 (CA Secretary of State Business Search)
- Laboratory Corporation of America's agent for service of process: CSC
Lawyers Incorporating Service, 2710 Gateway Oaks Dr. St. 150N,
Sacramento, CA 95833 (CA Secretary of State Business Search)

This motion to impose is GRANTED as to the creditors that were properly served,
and the order should except those who were not properly served.

If debtor wishes to continue th emotion as to the unserved creditors, APPEARANCE
should be made and this will be continued to **August 23, 2017 at 11:00 a.m.** for the
above parties to be properly served. Debtor shall file a proof of service before then.

APPEARANCE WAIVED on August 2, 2017 if the stay as to the properly served and
unopposing creditors is sufficient.

Party Information

Debtor(s):

Cindy Lee Harris

Represented By
Kevin T Simon

Movant(s):

Cindy Lee Harris

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

1:15-14037 David Brown Levy

Chapter 7

Adv#: 1:16-01024 Poteet et al v. Levy

#11.00 Status Conference re Complaint to determine
dischargeability of debt

fr. 5/4/16; 11/16/16; 3/29/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Having considered the status report, and for good cause appearing, this status conference will be continued to **October 18, 2017 at 11:00 a.m.** Parties shall file an order notifying the Court of trial dates for the State Court Action before then.

APPEARANCE WAIVED on August 2, 2017.

Party Information

Debtor(s):

David Brown Levy	Pro Se
------------------	--------

Defendant(s):

David Brown Levy	Pro Se
------------------	--------

Plaintiff(s):

Gene Salkind	Represented By Bernard J Kornberg
The Workshop LLC	Represented By Bernard J Kornberg
Victor Poteet	Represented By Bernard J Kornberg
Michael Clofine	Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

CONT... David Brown Levy

Bernard J Kornberg

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Represented By
Wesley H Avery

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

1:17-10482 Rodolfo Rosales

Chapter 13

Adv#: 1:17-01028 Rosales et al v. New Penn Financial LLC dba Shellpoint Mortgage Ser

#12.00 Status Conferece re: First Amended Complaint for
1) Violation of Californina Homeowner Bill of Rights
2) Wrongful Foreclosure;
3) Negligence;
4) Judgment to Cancel TDUS; 5) Quiet Title; 6) Declaratory Relief
7) Unlawful Business Practices

fr. 6/14/17

Docket 16

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rodolfo Rosales

Represented By
Kevin T Simon

Defendant(s):

Duke Partners II, LLC

Pro Se

The Bank of New York Mellon

Pro Se

New Penn Financial LLC dba

Pro Se

MTC FINANCIAL, INC., DBA

Pro Se

Joint Debtor(s):

Rosa Maria Hinojosa

Represented By
Kevin T Simon

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

CONT... Rodolfo Rosales

Chapter 13

Plaintiff(s):

Rosa Maria Hinojosa

Represented By
Matthew D Resnik
Matthew D Resnik

Rodolfo Rosales

Represented By
Matthew D Resnik
Matthew D Resnik

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

1:16-11141 Hope H. Landeros

Chapter 13

Adv#: 1:16-01155 Landeros v. HSBC BANK USA, NATIONAL ASSOCIATION et al

#13.00 Status Conference re: Complaint

fr. 1/25/17; 3/29/17

Docket 1

Courtroom Deputy:

Tentative Ruling:

In light of motion to reconsider noticed for August 23 in related case, the court will continue this to August 23 at 11 am as well. Plaintiff to give notice.

NO APPEARANCE REQUIRED for August 2

Party Information

Debtor(s):

Hope H. Landeros

Represented By
R Grace Rodriguez

Defendant(s):

Frank Villapando

Pro Se

Sylvia Villapando

Pro Se

HSBC BANK USA, NATIONAL

Pro Se

Plaintiff(s):

Hope H. Landeros

Represented By
R Grace Rodriguez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

1:16-11141 Hope H. Landeros

Chapter 13

#14.00 Motion for relief from stay

HSBC BANK USA, TRUSTEE
FOR OPTEUM MORTGAGE ACCEPTANCE

fr. 11/16/16, 11/30/16; 1/25/17; 3/29/17

Docket 31

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

In light of motion to reconsider noticed for August 23 in adversary case, the court will continue this to August 23 at 11 am as well. Plaintiff to give notice.

NO APPEARANCE REQUIRED on August 2.

1/25/17 TENTATIVE BELOW

Petition Date: 4/15/16

Ch: 13

Service: Proper. Opposition filed 11/15/16.

Property: 12530 Herrick Ave., Sylmar (Los Angeles), CA 91342

Property Value: \$374,000 (per debtor's schedules)

Amount Owed: \$319,516.55

Equity Cushion: 6.5%

Equity: \$54,483.45.

Post-Petition Delinquency: \$8,865.60 (5 payments of \$1,773.12)

Movant requests relief under 11 U.S.C. 362(d)(1), with the relief requested in paragraphs **2** (proceed under non-bankruptcy law); **3** (Movant permitted to engage in loss mitigation activities); and **7** (waiver of the 4001(a)(3) stay).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

CONT... Hope H. Landeros

Chapter 13

Debtor opposes the Motion, arguing that she was a victim of elder financial abuse and identity theft, and did not apply for this loan nor receive any of the proceeds. Debtor has filed an adversary proceeding against HSBC and the alleged identity thieves, Sylvia and Frank Villapando (16-01155), asserting causes of action for fraud, financial elder abuse, cancellation of instruments, negligence of the original lender Opetum that should be imputed to HSBC (successor to Opetum), and declaratory relief that the instruments recorded against the property are void and unenforceable.

APPEARANCE REQUIRED

Party Information

Debtor(s):

Hope H. Landeros

Represented By
R Grace Rodriguez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

1:16-12586 Tae H Ko

Chapter 7

#15.00 Debtor's Motion to vacate dismissal

Docket 71

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

On 9/2/16, Pro Se Debtor ("Debtor") filed for chapter 13, and on 10/19/16, the case was converted to chapter 7. On 12/22/16, Debtor was dismissed for failure to file schedules. ECF No. 37. On 12/23/16, the Court vacated the dismissal due to clerical error. ECF No. 39. On 06/8/17, Debtor filed an adversary proceeding against VCI Account Services. On 6/26/17 Debtor's chapter 7 and adversary proceeding were dismissed for failure to appear at a 341(a) meeting. ECF No. 67. Debtor does not have any previous bankruptcies.

Debtor now moves for an order vacating dismissal of the case. Debtor argues he received insufficient notice of the 341(a) meeting on 6/23/17. On 6/12/17, Debtor filed Notice of Change of Address, and on 6/14/17, the Court entered Debtor's notice. On 6/12/17, the Court sent Notice of Meeting of Creditors to Debtor's old address. Debtor contends he failed to appear at the 341(a) meeting because he never received notice due to a clerical error. Debtor argues he risks being homeless within a month or two, as his income has decreased. Debtor is currently seeking an attorney to represent him, and he expects to have an attorney at the next hearing if this motion is approved.

Motions to vacate dismissal orders, or motions to reinstate cases as they are colloquially called, are frequent procedural requests. Bankruptcy courts are authorized to set aside a final judgment or order, including case dismissal orders, under Fed. R. Bankr.P. 9024, which incorporates Fed.R.Civ.P. 60(b) into practice under the Bankruptcy Code. Rule 60(b) sets forth six reasons that justify granting relief from a final judgment or order:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

CONT...

Tae H Ko

Chapter 7

to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Fed.R.Civ.P. 60(b).

Although several clauses of this rule use the term "judgment," under the Bankruptcy Rules "judgment" means any appealable order. Fed.R.Bankr.P. 9001(7). An order of dismissal is an appealable order. In his Motion to Vacate, Debtor did not cite to any law, so it is unclear which clause of Rule 60(b) he is relying upon in vacating the dismissal order. Having reviewed the Motion to Vacate, clauses (2), (3), (4), and (5) of Rule 60(b) are clearly inapplicable. The Court will therefore analyze whether either clause (1) or clause (6) of Rule 60(b) authorize the bankruptcy court to vacate its dismissal order.

In his motion, Debtor complains of not receiving sufficient notice of the June 23 § 341(a) meeting, contending notice was sent to his previous address on the same day he filed a change of address form with the Court. Debtor does not address, however, the reason he did not attend the originally scheduled § 341(a) meeting held on May 16, 2017 (see doc. 51). When Debtor did not appear on May 16, 2017, the § 341(a) meeting was thereafter continued to June 9, 2017 (see doc. 58), where again Debtor failed to appear. Debtor provides no explanation for having missed two scheduled § 341 meetings, yet argues that his case was dismissed because of "the Court clerk's mistake or error." Motion to Vacate Dismissal, 5:23-26. Had the failure to appear on June 23, 2017 been Debtor's first missed appearance, this case would not have been dismissed. It was Debtor's repeated failure to appear at the § 341(a) meetings that caused his case to be dismissed.

Service Proper. No opposition filed.

Party Information

Debtor(s):

Tae H Ko

Pro Se

Movant(s):

Tae H Ko

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

CONT... Tae H Ko

Chapter 7

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

1:16-11950 Pimsiri Wichayathanawas

Chapter 7

#16.00 Trustee's Motion for an Order (1) Approving Sale of the Estate's Membership Interest in Siri Thai Cuisine, LLC; (2) Approving the Proposed Overbid Procedure; and (3) Determining that Buyers are Entitled to Section 363(m) Protection

Docket 74

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The Chapter 7 Trustee (the "Trustee") requests the Court approve the sale of the Estate's 20% membership interest (the "Interest") in Siri Thai Cuisine, LLC ("Siri") for \$35,000, pursuant to 11 U.S.C. §§ 363(b), (m). The Trustee further requests the Court to approve the proposed overbid procedures, that it find Buyers entitled to § 363(m) protection, and that it waive the §6004(h) stay.

The Trustee attempted to market the Estate's Interest, but there is no "robust market for selling the estate's minority to a third party." ECF No. 74, ¶A1. So the interest is to be sold to Peerawich Kongvisawamit and Nutthiya Bunrac ("Buyers"), members of Siri, on an "as is" and "where is" basis without any guaranty or warranty. Buyers were represented by their own counsel, and were not given any special treatment or advantage. The Interest is not being sold free and clear of any liens, claims, and encumbrances under §363(f).

The Interest may also be sold to a successful overbidder approved by the Trustee. Trustee asserts she provided notice to all known potential bidders who might participate in the auction to encourage bidders to offer the highest price for the Interest. The proposed overbid procedures are as follows: (1) any party wishing to participate in the overbid must notify the Trustee no later than three days before the hearing on the Motion; (2) participating parties must deposit a \$35,000 cashier's check or money order to the Trustee; (3) each party must be present either physically or telephonically; (4) initial overbids must be at least \$40,000; (5) parties maintain the ability to bid after initially passing their turns to overbid; and (6) the successful bidder must pay the full amount of the bid to the Trustee within fifteen calendar days after entry of an order granting the Motion.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

CONT... Pimsiri Wichayathanawas

Chapter 7

On 6/8/17, the parties signed the Membership Interest Purchase Agreement ("Purchase Agreement"). Debtor agrees to amend her Amended Schedule C, and withdraw her claimed exemption of \$24,000 to the Interest. This withdrawal allows all \$35,000 to go towards paying the Estate's creditors. On 7/25/17, Debtor filed an Amended Schedule C, which complies with the above agreement. ECF No. 78. The proposed sale to be in the best interest of the Estate, as it will generate funds to pay allowed claims. The waiver of the §6004(h) stay is appropriate to avoid prolonging the closing date of the sale.

No opposition filed. The following were not served/ improperly served:

- American Honda Finance. Agent of service of process to be served: C T Corporation System, 818 W. 7th Street Suite 930, Los Angeles, CA 90017 (CA Secretary of State Business Search) - **** secured creditor**
- Capital One Bank (USA), N.A. Per POC, to be served at PO Box 71083, Charlotte, NC 28272-1083
- Employment Development Department. Per POC, to be served at PO Box 826880, Sacramento, CA 95814
- Aeerath Amy Numsinlarn. Per POC, to be served at 13459 Moorpark St. #6, Sherman Oaks, CA 91423
- Thawatchai Seechun. Per POC, to be served at 13459 Moorpark St. #6, Sherman Oaks, CA 91423
- Rasida Pinyotappratan. Per POC, to be served at 1528 N. Hobart Blvd. #2, Los Angeles, CA 90027
- Chamrung Sibkhe. Per POC, to be served at 14411 Nordhoff St. Apt. 1, Panorama City, CA 91406
- Witta Kulchareon. Per POC, to be served at 1760 State St #17, South Pasadena, CA 91030
- Wells Fargo, N.A. Per POC, to be served at PO Box 10438, MAC F8235-02F, Des Moines, IA 50306-0438

This motion will be continued to **September 6, 2017 at 11:00 a.m.** for the above parties to be properly served. Debtor shall file a proof of service before then.

APPEARANCE WAIVED on August 2, 2017.

Party Information

Debtor(s):

Pimsiri Wichayathanawas

Represented By
Faith A Ford

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

CONT... Pimsiri Wichayathanawas

Chapter 7

Movant(s):

Amy L Goldman (TR)

Represented By
Annie Verdries
Lovee D Sarenas

Trustee(s):

Amy L Goldman (TR)

Represented By
Annie Verdries
Lovee D Sarenas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

11:00 AM

1:15-11118 Salubrious Pharmaceutical LLC

Chapter 7

**#17.00 Trustee's Final Report and Application for
Compensation and Deadline to Object**

Docket 152

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Fees and costs approved. NO opposition. NO APPEARANCE REQUIRED.

Party Information

Debtor(s):

Salubrious Pharmaceutical LLC

Represented By
Timothy Quick

Trustee(s):

Amy L Goldman (TR)

Represented By
Doah Kim
Annie Verdries
Lovee D Sarenas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

1:00 PM

1:17-10148 Jose Matias Maranon

Chapter 7

Adv#: 1:17-01037 State Compensation Insurance Fund v. Maranon

#18.00 Motion to Dismiss Adversary Proceeding

fr. 7/26/17

Docket 4

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

State Compensation Insurance Fund ("State Fund") is a California state agency authorized to provide workers' compensation insurance to California employers. State Fund issued a worker's compensation insurance policy, Policy No. 9095289-14 (the "Policy"), to J & J General Contractors ("J&J"), a business solely owned by Jose Matias Maranon ("Debtor"), for April 8, 2014 to April 8, 2015 (the "Policy Contract").

The Complaint alleges that J&J was to pay a premium for the Policy, and perform all other duties and obligations set forth in the Policy (i.e. submitting complete and accurate employee classifications, payroll reports, and other business records for audit at the end of each policy year). On June 3, 2015, State Fund conducted an audit of Debtor's payroll. State Fund determined that Debtor, doing business as J&J, had underreported his payroll, and had failed to report payroll for unlicensed sub-contractors he had hired. As a result, Debtor owed State Fund \$43,343.09 in past premiums.

On March 10, 2016, State Fund, through its limited assignee, Creditor's Adjustment Bureau, filed a complaint against Debtor in Los Angeles County Superior Court, Case No. EC064995 (the "Civil Action"). Claims asserted in the Civil Action were: breach of contract, open book account, account stated, and reasonable value. State Fund filed the Civil Action due to its belief that Debtor intentionally deceived it to reduce his premiums. State Fund contends that Debtor knowingly and intentionally underreported his payroll, and failed to provide employee time cards and independent contractors' 1099 forms.

On January 19, 2017, before the Civil Action could be tried, Debtor filed a voluntary Chapter 7 (the "Petition"), thereby staying the Civil Action. State Fund alleges Debtor

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

1:00 PM

CONT...

Jose Matias Maranon

Chapter 7

filed the Petition to avoid a potentially adverse judgment in the Civil Action. On April 20, 2017, State Fund filed a Complaint to Determine Dischargeability of Debt Under 11 U.S.C. §532(a)(2) (the "Complaint").

State Fund requests that Debtor's debt of \$43,343.09 be non-dischargeable due to his misrepresentations of payroll reports and withholdings of employee cards and other documents. State Fund further requests that the Court award it reasonable attorney's fees to the fullest extent allowed by the law.

In response, Debtor filed a Motion to Dismiss the Complaint pursuant to Fed R.Civ P. 12(b)(6) and Fed R. Bankr. P. §§ 7009, 7012 (the "Motion"). Debtor asserts State Fund failed to state a claim upon which relief can be granted, and to assert sufficient facts in support of its claim that Debtor acted with the intent to defraud when he underreported his business' pay roll. Debtor requests that State Fund's complaint be dismissed with prejudice, that it not be granted leave to amend, that Debtor's debt of \$43,343.09 be discharged, that the discharge serve as a permanent injunction against any actions whether commenced pre-petition or post-petition, and that the Court award Debtor's costs and reasonable attorney's fees.

Debtor opposes the Motion (the "Opposition"), arguing the Complaint is sufficiently pled and that the Motion should be denied. State Fund requests leave to file an amended complaint in the event that the Court finds merit in the Motion.

12(b)(6)

A motion to dismiss under Civil Rule 12(b)(6) challenges the sufficiency of the allegations set forth in the complaint. "A Rule 12(b)(6) dismissal may be based on either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" Johnson v. Riverside Healthcare Sys., 534 F.3d 1116, 1121 (9th Cir. 2008) (*quoting* Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990)).

In resolving a Civil Rule 12(b)(6) motion to dismiss, the court must construe the complaint in the light most favorable to the plaintiff, and accept all well-pleaded factual allegations as true. Johnson, 534 F.3d at 1122; Knox v. Davis, 260 F.3d 1009, 1012 (9th Cir. 2001). On the other hand, the court is not bound by conclusory statements, statements of law, and unwarranted inferences cast as factual allegations. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Clegg v. Cult Awareness Network, 18 F.3d 752, 754-55 (9th Cir. 1994).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

1:00 PM

CONT...

Jose Matias Maranon

Chapter 7

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (citations omitted). "In practice, a complaint . . . must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." Id. at 562 (emphasis added) (*quoting Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)).

In Ashcroft v. Iqbal, 556 U.S. 662 (2009), the Supreme Court elaborated on the Twombly standard: To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Id. at 663 (citations and internal quotation marks omitted). In light of that standard, the Supreme Court invited courts considering a motion to dismiss to use a two pronged approach. First, "begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." Iqbal at 680-1. After those pleadings are excised, all that is left to consider are the factual allegations in the "complaint to determine if they plausibly suggest an entitlement to relief." Id. Courts should assume the veracity of well-plead factual allegations. Id. "If there are two alternative explanations, one advanced by the defendant and the other advanced by plaintiff, both of which are plausible, plaintiff's complaint survives a motion to dismiss under Rule 12(b)(6)." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011); see also Moss v. United States Secret Serv., 2013 U.S. App. LEXIS 4121 (9th Cir. Feb. 26, 2013).

Federal Rule of Civil Procedure 9(b) imposes heightened pleading requirements for claims of fraud. See Fed. R. Civ. P. 9(b). Under Rule 9(b), a plaintiff "must state with particularity the circumstances constituting fraud," but can allege generally "[m]alice, intent, knowledge, and other conditions of a person's mind." Twombly, 550 U.S. at 559. The particularity requirement "has been interpreted to mean the pleader must state the time, place and specific content of the false representations as well as the identities of the parties to the misrepresentation." In re MannKind Sec. Actions, 2011 U.S. Dist. LEXIS 145253, 19-20 (C.D. Cal. Dec. 16, 2011).

"Averments of fraud must be accompanied by the who, what, when, where and how

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

1:00 PM

CONT...

Jose Matias Maranon

Chapter 7

of the misconduct charged." Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal quotations omitted) and Walling v. Beverly Enterprises, 476 F.2d 393, 397 (9th Cir. 1973). "Rule 9(b) ensures that allegations of fraud are specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." Semegen v. Weidner, 780 F.2d 727, 731 (9th Cir. 1985). "It also prevents the filing of a complaint as a pretext for the discovery of unknown wrongs and protects potential defendants - - especially professionals whose reputations in their fields of expertise are most sensitive to slander - - from the harm that comes from being charged with the commission of fraudulent acts." Id.

Discussion

As noted above, the Complaint must contain "either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." Twombly, 550 U.S. at 562. This pleading requirement is heightened by Federal Rule of Civil Procedure 9(b) when there is a claim of fraud. Here, the particularity requirement of Fed. R. Civ. P. 9(b) is not met. Debtor allegedly committed fraud by underreporting his payroll, failing to properly account for unlicensed sub-contractors, and failing to provide required documentation. Complaint ¶12. The allegations seem to be that the fraud took place between April 8, 2014 and April 8, 2015, and on June 3, 2015 during the audit. Id. at ¶¶6, 9. Per the Policy Contract, Debtor was to "keep records of information needed to compute premium," including but not limited to ledgers, payroll and disbursement records. Id. at ¶¶14F-G. Debtor points out that the same policy provides for an audit and reassessment, resulting in a final premium. See Motion ¶IB. At what point did Debtor commit fraud as opposed to committing an error subject to a readjustment in premiums? What is State Fund alleging Debtor did or knew as opposed to what J&J, in general, did? The Complaint does not adequately distinguish between J&J and the individual Debtor.

According to the Policy, Debtor was to provide State Fund with copies of records upon request. Complaint ¶14F. However, State Fund has not specified when and how many requests were made for Debtor to turn over documentation. Neither has State Fund specified exactly which records were fraudulently made by Debtor. State Fund alleges Debtor fraudulently underreported payrolls, and failed to report payroll for unlicensed sub-contractors he had hired. Id. at ¶11. It is unclear whether all or some payrolls were fraudulently underreported. Similarly, it is unclear whether Debtor fraudulently failed to provide payrolls for all or some unlicensed sub-contractors. As such, there is an "absence of sufficient facts." Johnson, 534 F.3d at

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

1:00 PM

CONT... Jose Matias Maranon

Chapter 7

1121(*quoting* Balistreri, 901 F.2d at 699. Because it is important to distinguish between a breach of contract and fraud, these specific allegations are important.

Further, State Fund alleges a cause of action based on 11 U.S.C. § 523(a)(2), but does not specify whether the cause of action proceeds under subsection (A) or (B). 11 U.S.C. § 523 provides that:

(a) A discharge under section 727, 1141, 1128(a), 1128(b), or 1328(b) of this title does not discharge an individual debtor from any debt (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained, by—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B) use of a statement in writing—(i) that is materially false; (ii) respecting the debtor's or an insider's financial condition; (iii) on which the creditor to whom the debtor is liable for such money, property, services, or creditor reasonably relied; and (iv) that the debtor caused to be made or published with intent to deceive. . .

11 U.S.C. § 523(a)(2)(A) and (B) are mutually exclusive, "the former referring to representations other than those respecting the debtor's financial condition and the latter referring specifically to written statements of financial condition." In re Kirsh, 973 F.2d 1454, 1455 (9th Cir. 1992)(The Court's analysis revolved around 11 U.S.C. § 523(a)(2)(A), because the statement in question was not regarding debtor's net worth or overall financial condition).

The Complaint alleges that Debtor "knowingly and intentionally under reported his payroll and failed to provide employee time cards/alleged independent contractor's 1099 forms, with the intent to deceive State Fund and wrongfully reduce the premiums it owed to State Fund." Complaint ¶12. Based on the Complaint, it is unclear whether payroll, employee time cards, and 1099 forms constitute statements respecting Debtor's financial condition. State Fund did not properly separate the facts to meet the standards set forth in either 11 U.S.C. § 523(a)(2)(A) or (B). As such, it is unclear whether State Fund meets "the material elements necessary to sustain recovery under" either 11 U.S.C. § 523(a)(2)(A) or (B). Twombly, 550 U.S. at 555 (citations omitted)(*quoting* Car Carriers, Inc., 745 F.2d at 1106.

Motion Granted with leave to amend within 30 days.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

1:00 PM

CONT...

Jose Matias Maranon

Chapter 7

Party Information

Debtor(s):

Jose Matias Maranon

Represented By
Geoffrey G Melkonian

Defendant(s):

Jose Matias Maranon

Represented By
Geoffrey G Melkonian

Plaintiff(s):

State Compensation Insurance Fund

Represented By
Rhett Johnson

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, August 02, 2017

Hearing Room 302

1:00 PM

1:17-10148 Jose Matias Maranon

Chapter 7

Adv#: 1:17-01037 State Compensation Insurance Fund v. Maranon

#19.00 Status Conference Re:
Complaint to Determine Dischargeability of Debt
Under 11 U.S.C. Sec. 523(a)(2)

fr. 6/21/17, 7/26/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Having considered the Joint Status Report and finding good cause, this status conference is continued to **July 26, 2017 at 1:00 p.m.**
Plaintiff to give notice of continued status conference.

NO APPEARANCE REQUIRED ON 6/21/17

Party Information

Debtor(s):

Jose Matias Maranon

Represented By
Geoffrey G Melkonian

Defendant(s):

Jose Matias Maranon

Pro Se

Plaintiff(s):

State Compensation Insurance Fund

Represented By
Rhett Johnson

Trustee(s):

David Seror (TR)

Pro Se